

Internal Revenue Service
District Director

Department of the Treasury
1100 Commerce Street
Dallas, Texas 75242

Date: MAY 18 1939

Employer ID Number

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were created under the Trust agreement (Will) signed and dated [REDACTED] by [REDACTED], a resident of [REDACTED]. This Trust was funded for \$[REDACTED] on [REDACTED].

The purpose of this Trust is: "The Trustee shall use the income derived from said Trust for the necessary and perpetual care of my family graves consisting of eight lots at [REDACTED] being [REDACTED] grave and those of my father, mother and sister. If it should become necessary to use any of the principal amount for this purpose, the Trustee is authorized in its sole discretion to do so."

The primary purpose of this Trust is for the perpetual care of family cemetery lots.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 501(c)(3)-1(b)(1) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: "(a) Limit the purposes of such organization to one or more exempt purposes;" and, "(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 501(c)(3)-1(b)(2) of the Income Tax Regulations states that the term "articles" includes the Trust instrument.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides, in part:

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations defines the term "charitable" in its generally accepted legal sense and includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government, and promotion of social welfare by organizations designed to accomplish any of the above purposes.

A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable.

Revenue Ruling 79-359, 1979-2 C.B. 226 held that an organization formed to provide traditional burial services that directly support and maintain basic tenet and beliefs of a religion regarding burial of its members is operated exclusively for charitable purposes. The organization is exempt under Code Section 501(c)(3).

Revenue Ruling 69-256, 1969-1 C.B. 151 held that a testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not organized and operated for a charitable purpose and is, therefore, not exempt under section 501(c)(3) of the Code.

Revenue Ruling 58-190, C.B. 1958-1, 15, states that the income of a trust established and designed for the purpose of furnishing perpetual care for a particular mausoleum crypt or burial lot inures to the benefit of the grantor, and thus the organization was not exempt under Code section 501(c)(3).

Your organization is similar to the organizations described in Revenue Ruling 69-256 and 58-190. You are not organized and operated for charitable purposes; you were created to provide funds for the perpetual care of family cemetery lots; and, you are operated for the benefit of private shareholders or individuals.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious or other exempt purposes within the meaning of Section 501(c)(3). You are required to file Federal Income Tax returns on Form 1120.

We have also considered your organization under Section 501(c)(13) of the Code. If you wish to apply for exemption under this section, which provides for exemption for organization not organized for profit but operated exclusively for the perpetual care of family cemeteries. You may complete and return the enclosed Form 1024 and Schedule H.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

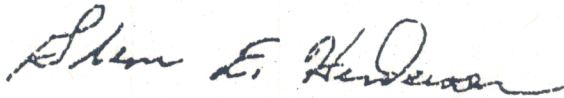
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-address envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



District Director

Enclosures:

Publication 892

Form 6018

Form 1024

Return envelope